

MINUTES
Texas Board of Health Meeting
July 1, 2004

The July 1, 2004 meeting of the Texas Board of Health (Board) was called to order at 9:05 a.m., at the Texas Department of Health (department), 1100 West 49th Street, Room M-739, Austin, Texas. Mr. George H. McCleskey, Chair, presided. A quorum was present with members, Raymond Hannigan, Margo Scholin, M.S., J.D., Mary E. Ceverha and Mario Anzaldua, M.D. in attendance.

Registered Guests

Bob Glaze, M.D., Past Board of Health Member
David L. Collins, Past Board of Health Member
Beverly Robinson, Ph.D., Past Board of Health Member
Lawrence N. Nickey, M.D., Past Board of Health member
David M. Cochran, Texas Health Foundation
Heidi McConnell, Governor's Office of Budget Policy and Planning
Dinah Welsh, Texas Hospital Association
Regina Martin, Legislative Budget Board
Courtney Hoffman, Eric Wright and Associates
Erica Brumleve, GlaxoSmithKline
Roger Culberson, Act Now!
Tracy Wilson, Act Now!
Larry Niemann, Texas Apartment Association
Lillie Gilligan, Alleogan/Glaxo-Smith-Kline
Frank Jackson, Bristol Myers Squibb

Mr. McCleskey welcomed guests. Also in attendance at the meeting were Nick Curry, M.D., M.P.H., Executive Deputy Commissioner, and other key staff members of the department.

ON A MOTION MADE BY MR. HANNIGAN AND SECONDED BY MS. SCHOLIN, THE MINUTES OF THE APRIL 15, 2004 TEXAS BOARD OF HEALTH MEETING WERE APPROVED.

Ms. Heidi McConnell, Office of the Governor, presented framed certificates to the Board of Health members, on behalf of Governor Rick Perry, that commissioned each Board member as an honorary Texan. Mr. McCleskey stated, on behalf of the Board, that it has been an honor to have been appointed by Governor Rick Perry to serve on the Texas Board of Health.

Dr. Curry presented a resolution from the Texas Hospital Association to the Texas Board of Health paying tribute to the leadership, commitment and dedication of the members who have faithfully served the Texas Board of Health during its existence. (*Attachment I*)

Dr. Curry presented the Commissioner's Report for Dr. Eduardo Sanchez and announced the death of Assefa Tulu, M.D., Chief Epidemiologist for the Dallas County Health and Human Services Department. Dr. Sanchez spoke, by prerecorded videotape, regarding the history of the health department in Texas and thanked the Texas Board of Health for their dedicated service to the citizens of Texas. (*Attachments II and III*)

Dr. Anzaldua recognized Mr. Sam Cooper, Director, Children with Special Health Care Needs Division, concerning approval of final adoption of rules for the payment of claims for services and the deadline for correction and resubmission of denied claims in the Children with Special Health Care Needs Services program. (*Attachment IV*)

ON A MOTION MADE BY DR. ANZALDUA AND SECONDED BY MS. SCHOLIN, THE BOARD APPROVED AN ORDER ADOPTING RULES CONCERNING THE PAYMENT OF CLAIMS FOR SERVICES AND THE DEADLINE FOR CORRECTION AND RESUBMISSION OF DENIED CLAIMS IN THE CHILDREN WITH SPECIAL HEALTH CARE NEEDS SERVICES PROGRAM TO BE EFFECTIVE AUGUST 1, 2004, AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Dr. Anzaldua recognized Mr. Austin Kessler, Diabetes Program, concerning approval of final adoption of rules for the Diabetic Eye Disease Program. (*Attachment V*)

ON A MOTION MADE BY DR. ANZALDUA AND SECONDED BY MS. SCHOLIN, THE BOARD APPROVED AN ORDER ADOPTING RULES CONCERNING THE DIABETIC EYE DISEASE PROGRAM TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Dr. Anzaldua recognized Margaret Drummond-Borg, M.D., Director, Genetic Screening and Care Management Division, concerning approval of final adoption of rules for the Newborn Screening Program. (*Attachment VI*)

ON A MOTION MADE BY DR. ANZALDUA AND SECONDED BY MR. HANNIGAN, THE BOARD APPROVED AN ORDER ADOPTING RULES CONCERNING THE NEWBORN SCREENING PROGRAM TO BE EFFECTIVE AUGUST 1, 2004, AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Dr. Anzaldua recognized Ms. Lisa Rodriguez, Bureau of Kidney Health Care, concerning approval of final adoption of rules for the Kidney Health Care Program. (*Attachment VII*)

ON A MOTION MADE BY DR. ANZALDUA AND SECONDED BY MS. SCHOLIN, THE BOARD APPROVED AN ORDER ADOPTING RULES CONCERNING THE KIDNEY HEALTH CARE PROGRAM TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Dr. Anzaldua recognized Tom Sidwa, D.V.M., Acting Division Director, Zoonosis Control, concerning approval of final adoption of rules for the quarantining or impounding of animals. (*Attachment VIII*)

ON A MOTION MADE BY DR. ANZALDUA AND SECONDED BY MR. HANNIGAN, THE BOARD APPROVED AN ORDER ADOPTING RULES CONCERNING THE QUARANTINING OR IMPOUNDING OF ANIMALS TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Mr. McCleskey acknowledged Dr. Anzaldua's service as past chairman and for faithfully serving on the Board a year after his term had expired. In appreciation of his dedication, Mr. McCleskey presented Dr. Anzaldua the Board gavel he used during the time he served as Board Chair.

Mr. Hannigan recognized Debra Owens, Chief, Bureau of Vital Statistics, concerning approval of final adoption of rules for the administrative procedures, issuance of vital records events and statistical information, and the Central Adoption Registry of the Bureau of Vital Statistics. (*Attachment IX*)

ON A MOTION MADE BY MR. HANNIGAN AND SECONDED BY DR. ANZALDUA, THE BOARD APPROVED AN ORDER ADOPTING RULES CONCERNING THE ADMINISTRATIVE PROCEDURES, ISSUANCE OF VITAL RECORDS EVENTS AND STATISTICAL INFORMATION, AND THE CENTRAL ADOPTION REGISTRY OF THE BUREAU OF VITAL STATISTICS TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Ms. Scholin recognized Ms. Cindy Bednar, Health Facility Licensing and Compliance Division, concerning approval of final adoption of rules for the regulation of special care facilities. (*Attachment X*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY DR. ANZALDUA, THE BOARD APPROVED AN ORDER ADOPTING RULES CONCERNING THE REGULATION OF SPECIAL CARE FACILITIES TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Ms. Scholin recognized Pam K. Kaderka, Program Specialist, Respiratory Care Practitioners Program, Professional Licensing and Certification, concerning approval of final adoption of rules for the registration and certification of persons practicing respiratory care. (*Attachment XI*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY MR. HANNIGAN, THE BOARD APPROVED AN ORDER ADOPTING RULES CONCERNING THE REGULATION AND CERTIFICATION OF RESPIRATORY CARE PRACTITIONERS TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Ms. Scholin recognized Ms. Yvonne Feinleib, Program Director, Professional Licensing and Certification Division, concerning approval of final rules for voluntary registration of opticians. (*Attachment XII*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY MR. HANNIGAN, THE BOARD APPROVED AN ORDER ADOPTING A RULE CONCERNING THE REGISTRATION OF OPTICIANS TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Ms. Scholin recognized Ms. Yvonne Feinleib, Program Director, Professional Licensing and Certification Division, concerning approval of final adoption of rules for the regulation of persons filling contact lens prescriptions. (*Attachment XIII*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY DR. ANZALDUA, THE BOARD APPROVED AN ORDER ADOPTING RULES CONCERNING THE REGULATION OF PERSONS FILLING CONTACT LENS PRESCRIPTIONS TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Ms. Scholin recognized Ms. Yvonne Feinleib, Program Director, Professional Licensing and Certification Division, concerning approval of final adoption of rules related to the registration of code enforcement officers. (*Attachment XIV*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY DR. ANZALDUA, THE BOARD APPROVED AN ORDER ADOPTING RULES CONCERNING THE REGISTRATION OF CODE ENFORCEMENT OFFICERS TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Ms. Scholin recognized Ms. Yvonne Feinleib, Program Director, Professional Licensing and Certification Division, concerning approval of final adoption of rules relating to the registration of sanitarians. (*Attachment XV*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY DR. ANZALDUA, THE BOARD APPROVED AN ORDER ADOPTING RULES CONCERNING THE REGISTRATION OF SANITARIANS TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Ms. Scholin recognized Mr. Derek Jakovich, Director, Licensing and Enforcement Division, Bureau of Food and Drug Safety, concerning approval of final adoption of rules for the licensure of food manufacturers, food wholesalers, and warehouse operators. (*Attachment XVI*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY DR. ANZALDUA, THE BOARD APPROVED AN ORDER ADOPTING RULES CONCERNING THE LICENSURE OF FOOD MANUFACTURERS, FOOD WHOLESALERS, AND WAREHOUSE OPERATORS TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Ms. Scholin recognized Ms. Kathy C. Perkins, Chief, Bureau of Emergency Management, concerning approval of final adoption of rules for the certification and licensure of emergency medical services (EMS) certificates, providers, EMS/Trauma systems funding, Do Not Resuscitate Orders and requirements for Automated External Defibrillator training. (*Attachment XVII*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY DR. ANZALDUA, THE BOARD APPROVED AN ORDER ADOPTING RULES CONCERNING THE CERTIFICATION AND LICENSURE OF EMERGENCY MEDICAL SERVICES (EMS) CERTIFICATES, PROVIDERS, EMS/TRAUMA SYSTEMS FUNDING, DO NOT RESUSCITATE ORDERS AND REQUIREMENTS FOR AUTOMATED EXTERNAL DEFIBRILLATOR TRAINING TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Ms. Scholin recognized Ms. Katie Moore, Recreational Sanitation and Swimming Pools, General Sanitation and Product Safety Division, concerning final rules for repeal of the design standards for public swimming pool construction. (*Attachment XVIII*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY DR. ANZALDUA, THE BOARD APPROVED AN ORDER ADOPTING RULES CONCERNING THE REPEAL OF THE DESIGN STANDARDS FOR PUBLIC SWIMMING POOL CONSTRUCTION TO BE EFFECTIVE SEPTEMBER 1, 2004, AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Ms. Scholin recognized Ms. Katie Moore, Recreational Sanitation and Swimming Pools, General Sanitation and Product Safety Division, concerning approval of final adoption of rules for the standards for public pools and spas. (*Attachment XIX*)

A MOTION WAS MADE BY MS. SCHOLIN AND SECONDED BY MR. HANNIGAN, TO APPROVE AN ORDER ADOPTING RULES CONCERNING THE STANDARDS FOR PUBLIC POOLS AND SPAS.

Mr. Larry Niemann, Attorney representing the Texas Apartment Association, Inc., spoke in support of the rules and commended Ms. Moore and her staff for a good set of rules. Mr. Niemann submitted a letter for the record that proposes an addition in Section 265.200(d) that relates to propping open a gate leading to a pool or spa yard. Written comment was submitted for the record. (*Attachment XX*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY MS. CEVERHA, THE BOARD APPROVED AN AMENDMENT TO ADD TO THE END OF §265.200: “(d) NO POOL OR SPA OWNER OR HIS AGENT OR EMPLOYEE MAY KNOWINGLY ALLOW A GATE IN A POOL YARD OR SPA YARD ENCLOSURE TO BE PROPPED OPEN OR TO REMAIN PROPPED OPEN AND NO PERSON MAY PROP OPEN SUCH A GATE UNLESS AN AGENT, EMPLOYEE, OR CONTRACTOR OF THE OWNER IS PRESENT AND DOING CONSTRUCTION, MAINTENANCE OR REPAIR WORK IN THE POOL YARD OR SPA YARD OR ON ITS ENCLOSURE THAT REASONABLY REQUIRES THE GATE TO BE PROPPED OPEN.”

THE BOARD APPROVED AN ORDER ADOPTING RULES AS AMENDED CONCERNING THE STANDARDS FOR PUBLIC POOLS AND SPAS TO BE EFFECTIVE SEPTEMBER 1, 2004, AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Mr. McCleskey and Ms. Ceverha recognized two past Board members in attendance, Dr. Beverly Robinson and Mr. David L. Collins.

Ms. Scholin recognized Mr. Richard A. Ratliff, Chief, Bureau of Radiation Control, concerning approval of final adoption of a rule for radiation control regulations for dental radiation machines. *(Attachment XXI)*

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY DR. ANZALDUA, THE BOARD APPROVED AN ORDER ADOPTING A RULE CONCERNING RADIATION CONTROL REGULATIONS FOR DENTAL RADIATION MACHINES TO BE EFFECTIVE SEPTEMBER 1, 2004, AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Ms. Scholin recognized Mr. Richard A. Ratliff, Chief, Bureau of Radiation Control, concerning approval of final adoption of rules for registration and radiation safety requirements for laser and intense-pulsed light devices. (*Attachment XXII*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY DR. ANZALDUA, THE BOARD APPROVED AN ORDER ADOPTING RULES CONCERNING THE REGISTRATION AND RADIATION SAFETY REQUIREMENTS FOR LASER AND INTENSE-PULSED LIGHT DEVICES BE EFFECTIVE SEPTEMBER 1, 2004, AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Ms. Scholin recognized Mr. Richard A. Ratliff, Chief, Bureau of Radiation Control, concerning approval of final adoption of a rule for general provisions and standards for protection against machine-produced radiation. (*Attachment XXIII*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY DR. ANZALDUA, THE BOARD APPROVED AN ORDER ADOPTING A RULE CONCERNING THE GENERAL PROVISIONS AND STANDARDS FOR PROTECTION AGAINST MACHINE-PRODUCED RADIATION TO BE EFFECTIVE SEPTEMBER 1, 2004, AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Ms. Scholin recognized Mr. Richard A. Ratliff, Chief, Bureau of Radiation Control, concerning approval of final adoption of a rule for the use of radiation machines in the healing arts. (*Attachment XXIV*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY DR. ANZALDUA, THE BOARD APPROVED AN ORDER ADOPTING A RULE CONCERNING THE USE OF RADIATION MACHINES IN THE HEALING ARTS TO BE EFFECTIVE SEPTEMBER 1, 2004, AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Ms. Scholin recognized Mr. Richard A. Ratliff, Chief, Bureau of Radiation Control, concerning approval of final adoption of a rule for the registration of radiation machine use and services. (*Attachment XXV*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY DR. ANZALDUA, THE BOARD APPROVED AN ORDER ADOPTING A RULE CONCERNING THE REGISTRATION OF RADIATION MACHINE USE AND SERVICES TO BE EFFECTIVE SEPTEMBER 1, 2004, AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Ms. Scholin recognized Mr. Richard A. Ratliff, Chief, Bureau of Radiation Control, concerning approval of final adoption of a rule for the licensing of uranium recovery and byproduct material disposal facilities. (*Attachment XXVI*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY DR. ANZALDUA, THE BOARD APPROVED AN ORDER ADOPTING A RULE CONCERNING THE LICENSING OF URANIUM RECOVERY AND BYPRODUCT MATERIAL DISPOSAL FACILITIES TO BE EFFECTIVE SEPTEMBER 1, 2004, AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Ms. Scholin recognized Mr. Richard A. Ratliff, Chief, Bureau of Radiation Control, concerning approval of final adoption of a rule for radiation control fees. (*Attachment XXVII*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY DR. ANZALDUA, THE BOARD APPROVED AN ORDER ADOPTING A RULE CONCERNING RADIATION CONTROL FEES TO BE EFFECTIVE SEPTEMBER 1, 2004, AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Ms. Scholin recognized Mr. Richard A. Ratliff, Chief, Bureau of Radiation Control, concerning approval of final adoption of a rule for licensing of radioactive waste processing and storage facilities. (*Attachment XXVIII*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY DR. ANZALDUA, THE BOARD APPROVED AN ORDER ADOPTING A RULE CONCERNING LICENSING OF RADIOACTIVE WASTE PROCESSING AND STORAGE FACILITIES TO BE EFFECTIVE SEPTEMBER 1, 2004, AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Ms. Scholin recognized Mr. Richard A. Ratliff, Chief, Bureau of Radiation Control, concerning approval of final adoption of a rule for the licensing of radioactive material. (*Attachment XXIX*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY DR. ANZALDUA, THE BOARD APPROVED AN ORDER ADOPTING A RULE CONCERNING THE LICENSING OF RADIOACTIVE MATERIAL TO BE EFFECTIVE SEPTEMBER 1, 2004, AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Ms. Scholin recognized Mr. Richard A. Ratliff, Chief, Bureau of Radiation Control, concerning approval of final adoption of a rule for radiation control exemptions, general licenses, and general license acknowledgements. (*Attachment XXX*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY DR. ANZALDUA, THE BOARD APPROVED AN ORDER ADOPTING A RULE CONCERNING RADIATION CONTROL EXEMPTIONS, GENERAL LICENSES, AND GENERAL LICENSE ACKNOWLEDGEMENTS TO BE EFFECTIVE SEPTEMBER 1, 2004, AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Ms. Scholin recognized Mr. Richard A. Ratliff, Chief, Bureau of Radiation Control, concerning approval of final adoption of a rule for radiation control regulations for radiation machines used in veterinary medicine. (*Attachment XXXI*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY DR. ANZALDUA, THE BOARD APPROVED AN ORDER ADOPTING A RULE CONCERNING RADIATION CONTROL REGULATIONS FOR RADIATION MACHINES USED IN VETERINARY MEDICINE TO BE EFFECTIVE SEPTEMBER 1, 2004, AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Mr. Mark Scott, Director, Internal Audit, presented a report regarding progress on the FY 2004 Internal Audit Plan. Tasks not completed by September 1, 2004, will be considered a FY2005 Department of State Health Services audit plan and risk assessment. Mr. Scott gave a report on the State Auditor and Historically Underutilized Business audits. (*Attachment XXXII*)

Ms. Machel Pharr, Chief Financial Officer, presented the Strategic Financial Issues Report for the quarter ending May 31, 2004, which will be the third report for Fiscal Year 2004. (*Attachment XXXIII*)

Mr. McCleskey called for public comment.

Mr. Tracy Wilson, AIDS Coalition of Texas Act Now, thanked the Board for their assistance with the Texas HIV Medication Program rules by listening to numerous comments and acting on those comments. Mr. Wilson thanked the Board for the opportunity to work with them and wished them well.

Mr. McCleskey and each Board member expressed their gratitude to department staff and wished the department much success in the future.

The meeting was adjourned on Friday, July 1, 2004 at 10:15 p.m.

NOTE FOR THE RECORD: As of September 1, 2004, the Texas Board of Health will no longer be in existence as provided by House Bill 2292, Acts of the 78th Legislature, Regular Session, 2003. The last meeting of the Texas Board of Health was held on July 1, 2004. The attached audiotape is part of the minutes and also a permanent record.